United States Bankruptcy Court

Eastern District of Pennsylvania

In the matter of:

STUART ROBERT HANSEN,

Debtor.

Case Number: 11-10472-SR

Courtroom #1

900 Market Street
Philadelphia, Pennsylvania

Date: June 07, 2011

Time: 10:32

Motion to Dismiss Case

BEFORE THE HONORABLE STEPHEN RASLAVICH
UNITED STATES BANKRUPTCY JUDGE

Appearances:

David B. Smith, Esq. — Counsel for Debtor

Michael Gallagher, Esq. — Counsel for Rosalyn Hansen
Andrew Milz, Esq.

This proceeding was recorded via electronic sound recording and this transcript was provided by:

BHI Business Services
24 Indian Pipe Drive
Wynantskill, New York 12198
518-283-8888
email: bhitranscripts@gmail.com

THE COURT: This leaves the Hansen matter. Come on up folks.

MR. GALLAGHER: Good morning, your Honor, Michael Gallagher for Rosalyn Hansen.

THE COURT: Good morning.

MR. SMITH: Good morning your Honor, David Smith on behalf of Stuart Hansen.

MR. MILZ: Andrew Milz on behalf of Rosalyn Hansen your Honor.

THE COURT: Okay, good morning.

Well when we were here on the 24th I indicated to you that I would issue a decision on the motion to dismiss the case when we reconvened this morning. I am aware that a motion to convert the case from Chapter 7 to Chapter 11 was filed at 17 minutes past midnight this morning. In the papers Mr. Smith you accurately observed it, pursuant to our local rules a motion to convert such as was filed may be addressed by the Court without a hearing. I will view that. The motion will be denied for reasons that I will address. But, I think in order to do that it is appropriate that I give you the decision that I promised you with respect to the motion to dismiss this case as a

Chapter 7 case for the reason that a great deal of the facts and legal principles germain to the motion to dismiss the case - - excuse me the motion to convert the case are implicated in the motion to dismiss the case. That is to say that there is a substantial degree of overlapping in connection with the factors, objective factors that courts consider in evaluating the requisite good faith requirement that exists in the context of the case under Chapter 7 as well as the case under Chapter 11.

So, before I address the motion to convert I'm going to address the motion to dismiss.

Typically I would, in a case like this, have reduced the ruling to a writing but as I explained to you when we adjourned when we were here last I was going to be out last week and frankly my computer skills are such that it was not possible for me to prepare the more traditional written opinion for your benefit, but I assure you that I studied the record at great length and under the circumstances I will read to you the decision and you will allow the transcript to serve as the memorialization of the ruling on both matters.

So, with that further ado if you'll bear with me for a second. All right.

The Court has before it a motion to dismiss this bankruptcy case for cause under Bankruptcy Code Section 707a. This contested matter is a core proceeding under this Court's jurisdiction as set forth in Section 157 of Title 28. This bench ruling will constitute this Court's findings of fact and conclusions of law as required by Bankruptcy Rule 7052. Bankruptcy Code section 707a provides that after notice and a hearing the Bankruptcy Court may dismiss a Chapter 7 case for cause and it gives three illustrative, that is to say non-exclusive examples of cause which would justify the dismissal of a Chapter 7 case. They are one, unreasonable delay by the debtor which is prejudicial to creditors, two of nonpayment of required fees, and three, failure to file with the court the information required of the debtor under Bankruptcy Code section 521.

As stated is asked examples are merely illustrative in the court may dismiss a Chapter 7 case on other grounds one causes found to exist. The court has substantial discretion

in ruling on a motion to dismiss a case under sections 707a, and in exercising that discretion. The court must consider extenuating circumstances as well as the interests of the various parties. In this circuit the seminal case on point is In re Tamecki. The Third Circuit Court of Appeals decision issued in the year 2000 and reported at 229 Fed 3rd beginning at page 205.

In Tamecki the Circuit Court observed that the Bankruptcy Code does not define good faith. But, it noted that the courts in this circuit have uniformly held that at the very least good faith requires a showing of honest intention. That said are Circuit Court also noted with approval an earlier decision by the Sixth Circuit Court of Appeals wherein that circuit court cautioned that a dismissal based on lack of good faith should be confined carefully and generally utilized only in those egregious cases that entail concealed or misrepresented assets and/or sources of income, lavish lifestyles, and the intention to avoid a large single debt based upon conduct which is akin to fraud misconduct or gross negligence.

The court's inquiry will be an ad hoc one wherein the court must ascertain whether the petitioner has abused the provisions purpose or spirit of Bankruptcy law. The court's inquiry is to follow a nonrestrictive approach and it is to be an intensive inquiry taking into account the totality of the facts and the circumstances. Our Circuit Court has held and the parties themselves have acknowledged that once a party calls into question a Petitioner's good faith the burden shifts to the Petitioner to prove his good faith.

Recently in this district a set of 14 objective factors which courts have considered in the context of a good faith analysis was described. The decision to which I refer is the case of In re Glunk which is reported at 342 Bankruptcy Reporter beginning at page 717, a 2006 opinion of my colleague Judge Frank.

The utilization of objective indicia of good faith or the absence thereof is typically appropriate I indeed recourse to circumstantial evidence will generally be necessary as the Debtor will rarely acknowledge that he or she is proceeding in good faith.

With that in mind the Court in Glunk described the following 14 indicia. 1. Whether the debtor has reduced his creditors to a single creditor in the months prior to filing his petition; 2. Whether the debtor failed to make lifestyle adjustments or continued living an expansive or lavish lifestyle; 3. Whether the debtor filed the case in response to a judgment pending litigation; 4. Whether the debtor made no effort to repay his debts; 5. the unfairness of the use of the debtor of Chapter 7; 6. Whether the debtor has sufficient resources to pay his debts; 7. Whether the debtor is paying debts to insiders; 8. Whether the schedules inflate expenses to disguise financial well-being; 9. Whether the debtor transferred assets; 10. Whether the debtor is over-utilizing the protection of the Code to the unconscionable detriment of creditors; 11. Whether the debtor employed a deliberate and persistent pattern of evading a single major creditor; 12. Whether the debtor failed to make candid and full disclosure to the court and creditors; 13. Whether the debts are modest in relation to assets and income; and lastly, 14. Whether there are

multiple bankruptcy filings or other procedural "gymnastics."

Against the back drop of the foregoing authorities the Court has considered the evidentiary record it has before it, the same having been made at a hearing held on May 24, 2011. Having done so the Court has concluded with little hesitancy that this case presents one of the most egregious instances of a bad faith filing that the Court has been witness to in over 17 years.

Indeed, the evidence of this is overwhelming. And evidence of practically every single one of the 14 factors articulated in the Glunk decision is present in this record.

The Movant is Rosalyn Hansen. She is the Debtor's sister-in-law and holds a judgment against him in the approximate amount of $1.2 million. The judgment was entered against the Debtor in a lawsuit in the Court of Common Pleas of Delaware County, Pennsylvania.

The lawsuit was instituted by Rosalyn Hansen in July of 2003. In the lawsuit this Hansen asserted that the debtor unlawfully failed to pay her the proceeds of a $1 million

life insurance policy after the death of her husband who was the debtor's brother and a business partner. The insurance payment was intended for the purpose of compensating Ms. Hansen for her late husband's one half interest in the Hansen brothers business which was a wholesale paper brokerage firm called The Hansen Paper Company. An initial verdict against the debtor was entered on April 21, 2006 after a bench trial before the Honorable Charles Byrd, II. That's movant's Exhibit 1. The state court's opinion in support of its verdict is movant's Exhibit 2. The judgment was later modified to reflect offsets and as I just noted it is now in the approximate amount of $1.2 million reference here is made to Movant's Exhibit 3.

Thereafter Ms. Hansen attempted to execute on the judgment by levying on among other things, the stock of the paper company, which company the debtor had by then incorporated. The Debtor defiantly refused to turn over the shares to the Sherriff of Delaware County forcing the Movant, Ms. Hansen, to apply for supplementary relief in aide of execution.

Her petition was granted by the State Court in June of 2010. The State Court's June order and subsequent opinion denying an appeal thereof are Movant's Exhibits 5 and 6. Of significance, in appealing the grant of the Movant's request for aide and execution, the Debtor specifically argued that the stock of the Hansen paper company was immune from execution and levy because the stock was held by he and his wife as tenants by the entireties and that the State Court had heard in directing the turnover of the shares for that reason.

The State Court, however, specifically considered and rejected that very argument drawing on lengthy excerpts from its own prior opinion issued following the Debtor's appeal from the denial of post trial motions, the State Court held that the Debtor had never had the legal right to convey half of the paper company shares to his wife without payment to the Movant for her late husband's interest in the business.

In this respect the State Court considered and dismissed a January 2002 stock certificate offered by the Debtor which purported to reflect that the Debtor and his wife had jointly owned

the corporation since 2002. The Court stated that the unauthenticated newly discovered evidence was not genuine and was unreliable. The Court in this respect also stressed, 1. That as recently as 2008 the paper companies Federal income tax return listed the Debtor, Mr. Hansen, as its sole owner and two, that at her deposition in March of 2010 the Debtor's spouse testified under oath that she did not consider herself an owner of the business and the company was owned by the Debtor alone.

Of particular import is the August 31, 2010 opinion the State Court issued in support of its denial of the Debtor's appeal of the Court's granting of Ms. Hansen's petition for supplemental relief in aid of execution. The opinion is an absolutely scathing denunciation of the Debtor's actions both in connection with his original misconduct in misappropriating the life insurance proceeds to himself, but also in connection with his subsequent machinations to avoid having to pay the judgment debt.

This conduct was described by the court as being willful and malicious. The state court opined that, "in short, there was no reason for

the debtor not to pay the Movant besides his own unmitigated avarice and greed."

Undaunted the debtor sought a stay of a state court order directing the turnover of the stock. In November of 2010 the request was granted by the state court conditioned upon the posting of a bond in the amount of $1,414,669.69. It appears that the debtor appealed this decision to the Pennsylvania Superior Court which, on December 14, 2010, issued a similar order that is to say it granted the debtor a stay conditioned upon the posting of a bond in the amount that the Common Pleas Court had directed. The stay was dissolved by the Superior Court on January 5, 2011 after the debtor failed to post a bond.

Still unbowed the debtor continued to defy the state court order directing him to turn over the stock certificates. Ms. Hansen thereupon filed what was her second motion to have the debtor held in contempt and sought related injunctive relief including the appointment of a receiver for the paper company.

On January 14, 2011 the State Court issued a rule to show cause relative to this request

and scheduled a hearing thereon for January 27, 2011. The Debtor commenced his voluntary Chapter 7 case on January 24, 2011 three days before the scheduled hearing.

The Movant here seeks dismissal of this case arguing that it is part of the Debtor's continuing effort to evade the State Court's order and perpetuate a fraud on Ms. Hansen and the Court. The Debtor respondent denies this arguing that he is simply attempting to avail himself of his legal rights under the Bankruptcy Code and that nothing about his conduct is improper.

As will be discussed, the Debtor's argument is completely without merit. Indeed as I have previously noted the evidence against him is positively overwhelming.

Analyzing any set of facts against 14 factors such as those that I described in In re Glunk can be a bit unwieldy. The Court in the Glunk case itself recognize that ended therefore condensed and combined 14 factors it had identified down into a group of five based on what it implied with some overlapping. The five condensed factors are, one the debtor's

extravagant lifestyle and ability to pay. The Glunk court said that it implicated of the 14 factors, factors one, two, four, six, seven and 13. Condensed factor number two is the disproportionate impact that bankruptcy relief would have on one particular creditor or only a few creditors as compared to other creditors.

This factor it said had implicated factors one, three, seven and 11 of the 14 factors. Condensed factor three was whether there was evidence of forum shopping or efforts to manipulate the judicial process to thwart the orderly determination of a creditor claim pending in another court. The Glunk court said that this implicated factors 11 and 14.

The fourth condensed factor was whether there was pre-petition fraudulent conduct to place assets beyond the reach of creditors for less than full and candid disclosure in the Bankruptcy process itself. The Glunk Court indicated that this implicated factors 8, 9, 12 and 14.

Finally, condensed factor five was whether the end result, as to say if Bankruptcy Relief were to be permitted might be perceived to be

fundamentally unfair or excessive. The Glunk court indicated that that implicated of the 14 factors, factors number 5 and 10.

In the Glunk case, the Court noted that the Court could dismiss a case for any of the five categories which it had described, but that in its view the five factors were not all of equal weight and only that a rare case would warrant dismissal absent some evidence of misconduct by the Debtor which implicated condensed factors three and four. There's little need for concern on that score herein because evidence of all five of the categories described in Glunk is manifested clear on this record including most particularly, categories three and four which is where the Court will begin.

The evidentiary record is replete with unrebutted evidence that the Debtor actively sought to place assets beyond the reach of the only creditor making a claim on them, that is to say the Movant herein, Rosalyn Hansen. The state court in its opinion was express and particularly harsh on this very point. The misconduct described included, among other things, illegally moving individually held

assets to joint ownership with his spouse, diversion of funds from the paper company, blatantly misrepresenting the financial condition of both himself and the paper company. The Movant argues that the conduct described has continued herein. In this respect the Movant points to the fact that despite the entry of a final judgment by a court of competent jurisdiction finding that the debtor alone owns the paper company, the debtor scheduled the paper company as a jointly owned asset in this bankruptcy case and then assigned it a liquidation value of zero and then claimed a 100 percent exemption in the allegedly worthless asset.

Leaving aside the debtor's outrageous prepetition conduct this action implicates the debtors post position conduct and the question of whether the debtor has made less than full and candid disclosure in connection with the papers filed in his bankruptcy case. The debtor's position in his sworn bankruptcy filings stands in such stark contrast to pre-bankruptcy events that it compels particular scrutiny.

The Movant for her part anticipated this and filed a motion in limine prior to the May 24 hearing seeking an order from this Court precluding the debtor from offering testimony or other evidence intended to prove that the stock of the paper company was a joint as opposed to an individual asset. The debtor filed no written response to the motion but counsel for the parties offered argument on this point at the outset of the May 24 hearing.

The Movant argued that the Debtor was collaterally estopped from contesting the fact that he alone owns the paper company. In this regard the Movant argued that the four part test for the invocation of issue preclusion is satisfied and that the issue of ownership arose in the state court lawsuit. The issue was actually litigated. The determination of ownership was essential to the final judgment of the State Court and the Debtor was represented by Counsel.

Of these four factors, the Debtor takes issue with only one. That being the question of whether the ownership issue was actually litigated. The Debtor contends that it was not.

However, the state court in its August 31, 2010 opinion addressed itself to this very contention at length.

In this respect the State Court noted that in its 2006 opinion it had expressly held that the Debtor had no authority to convey his brother's one half interest in the paper company to anyone until he had legally obtained title to it himself, something which he had never done.

As a consequence, any claim to an ownership interest on the part of the Debtor's spouse had to fail. The Debtor nevertheless argued that the state court erred in failing to hold a fuller hearing that it did on the question of the stock ownership in the context of the petition then before it because it was required to do so under Pennsylvania Rule of Civil Procedure 3118a. Again, however, the State Court considered this argument and similarly rejected it noting that controlling Pennsylvania law holds that a fuller hearing such as the Debtor desired was unnecessary and not mandated where there were no issues of fact for the Court to resolve in the proceedings before it the Debtor was already bound by the State Court's

2006 determination that any purported transfer of an ownership interest in the paper company by the Debtor to his spouse was illegal. Principles of res judicata applied to that finding. The court also noted however that even if a fuller hearing had been conducted the paper company's 2008 tax return, which listed the debtor as its sole owner, together with the sworn testimony of the debtor's own spouse who disavowed any ownership interest in the company would have been conclusive on the point in question.

This court is bound to observe and not disturb the state courts 2006 decision as to the legality of the debtor's conduct by virtue of the Rooker Feldman doctrine. Similarly, for the reasons which the state court itself expressed, this Court found on May 24th that the question of the stock ownership had actually been litigated for purposes of its collateral estoppel effect. Accordingly, the Movant's motion in limine to preclude the re-litigation of that issue in the course of this contested matter was granted.

The upshot of that is that the Debtor's

bankruptcy schedules are materially false. This is not the only flaw in the schedules, however. As noted on Schedule B the Debtor valued the paper company business on a liquidation basis and claims its value to be zero. Meanwhile, Movant's exhibits 40 and 42 are the paper company's 2008 and 2009 Federal Income Tax returns. In 2008 the paper company reported gross revenues of over $20 million. In 2009 the paper company reported gross revenues of just under $22 million. For years, the paper company has paid the Debtor compensation of between $400,000 and $500,000 per year. To make matters worse, for years the Debtor failed to report a significant amount of this compensation for tax purposes.

It was only when the company's accountant would apparently no longer turn a blind eye to payments being made to the Debtor that were carried on the company's books as a advances, but which the company's accountant readily acknowledged under oath in open court to be compensation that the paper company began submitting IRS form 1099 to the Debtor for the payments in question.

To make matters worse yet in a thin attempt to clean the situation up, the Debtor created a promissory note for the years of payments to him which the company had deducted and the Debtor had failed to report. Leaving aside what bears every indicia of being blatant tax fraud, it is utterly preposterous in the extreme for the debtor to maintain as he does that the company is essentially worthless. The state court in its written opinions explored this chapter of this sorted of chronicle in great detail. For present purposes it will suffice to emphasize that it is yet another glaring misrepresentation on the Debtor's part in this case.

The Court turns here from factor four, that is to say whether there is evidence of pre-petition fraudulent conduct to place assets beyond the reach of creditors for less than full and candid disclosure in the bankruptcy process itself to factor three which is whether there is evidence of forum shopping or efforts to manipulate the judicial process to thwart the orderly determination of a creditor claim pending in another court.

Once again, the case against the Debtor is

exceedingly strong. There can be no question that the Debtor defiantly refused to submit to lawful orders of the State Court following many years of litigation. When the day of reckoning was finally at hand, the Debtor filed this Chapter 7 case to avoid it. There could scarcely be a clearer case of forum shopping and abusive behavior.

Astonishingly the Debtor himself acknowledged on more than one occasion under oath during the course of the March 24 hearing that the reason that he commenced this bankruptcy case was to evade having to pay the judgment his sister-in-law holds against him. He had offered her $250,000 payable for 50 months and he is apparently incensed that she will not accept his offer in compromise because he views himself to be the true victim.

Based on these factors alone, the present case well warrants dismissal but still there is more. Factor number one speaks to the Debtor's lavish lifestyle and his ability to pay its creditors. The evidence brought forth at the hearing on May 24 on this factor was little short of shocking. It was established beyond

question that the Debtor lives in a waterfront mansion on the Corsica River in Centerville, Maryland. In a November 2009 deposition the Debtor testified that the home had been appraised at $4 million. In this case the Debtor has listed value of the home at $2,348,000 which he says is based on its assessed value.

The Debtor lists ownership of $764,145 personal property including over $700,000 in a profit sharing plan. Amazingly, indeed, almost beyond belief, in November of 2010 just two short months before commencing this case the Debtor purchased a $72,000 brand new 2011 BMW automobile. The purported justification for this extravagance was to obtain better gas mileage. The Debtor also owns a vintage antique auto valued at over $25,000. A third late model SUV valued at over $36,000. The Debtor owns three boats collectively valued in excess of $80,000. He belongs to the Marrium Cricket Club, a fishing club and a yacht club. The Debtor lists average monthly income of just under $25,000. His housing expenses alone are roughly $14,000 per month.

Over and above that he pays his wife's credit card bill and has for years paid his child's college expenses, a fact which is not disclosed on the Debtor's schedules. Indeed the Debtor's schedule of expenses recites the payment of $2,000 per month for dependents not living at home but the Debtor's Schedule I recites that he has no dependants.

In sum, the evidence established that the Debtor lives a positively opulent lifestyle. He clearly made no downward adjustments to whatever prior to commencing this case and he proposes to simply continue living an opulent lifestyle after this case only in an enhanced position having rid himself of the Movant's claim against him.

This implicates factor number 2 from the condensed Glunk opinion factors. That is to say whether there is a disproportionate impact the bankruptcy relief would have on one particular creditor as compared to other creditors.

The evidence established that the Movant is presently unemployed, it has an income of roughly $50,000 a year in social security and a few other miscellaneous sources. She is paying

parent expenses from dwindling savings and has children with medical issues. The Movant is the Debtor's principal creditor.

It seems clear that in anticipation of his bankruptcy filing the Debtor ran up a few credit card balances to create the illusion of having other creditors. The Court views this as a transparent sham in as much as the paper company historically paid all of the Debtor's rather substantial credit card charges.

The only other unsecured debt which the Debtor lists is the alleged loan he created with his own company. The Debtor lists a first mortgage on his residence of approximately $1.7 million. Other things being equal there is significant equity in that property even using the Debtor's suspect valuation.

The Debtor, however, lists a second and a third mortgage, each in favor of the paper company's bank together totally approximately $600,000. This would exhaust the equity using the Debtor's valuation. However, in her moving papers, the Movant states that at a Section 341 meeting of creditors, the Debtor conceded that the larger, second mortgage was not in fact a

secured loan but was a contingent claim for a guarantee of a business loan which had not been called.

In his answer to the Movant's motion the Debtor acknowledged that his schedules were inaccurate but the answer is otherwise incomplete. At the hearing the Debtor offered numerous exhibits in support of his position but offered nothing whatever on the issue of the business loan. But the Court here has digressed somewhat. The point at issue is a consideration of the relative impact the Debtor's discharge would have on him versus other creditors and his principal creditor the Movant, Rosalyn Hansen.

The answer is clear and totally without doubt. The debtor has no other creditors that would be impacted if this case is dismissed and the debtor is forced to pay the movant's judgment. It seems abundantly clear that from his assets and income the debtor has the means to pay the claim, but simply stubbornly refuses to do so believing himself to be a victim.

The State Court, however, has found against him on this point in the strongest possible terms. The Debtor it is clear nevertheless is

prepared to try anything to avoid having face this reality. Against the many challenges to his good faith the Debtor offered virtually nothing in the way of probative, persuasive evidence of his good faith. Allowing this case to go forward will have a devastating impact on the Movant and a discharge of her judgment would bestow an enormous undeserved windfall on the Debtor.

It is worth emphasizing here that in this ruling the Court has not even discussed a variety of other facts brought forth at the evidentiary hearing, confining its discussion here only to the more egregious aspects of the case. Suffice it to say, however, that in reviewing the evidence the Court could not discern one single factor which favored the Debtor. It bears remembering, therefore, that as the Debtor's good faith was legitimately placed in issue, he bore the burden of establishing it. But, he failed to so scarcely begins to state the case.

In any event, this bring the Court to a consideration of a final factor articulated by the Court in the Glunk decision and that is

whether bankruptcy relief will produce a result which is fundamentally unfair. Unquestionably the answer is yes. As stated at the outset, this Court has never seen a case so demonstrably at odds with the provisions, purpose and spirit of the Bankruptcy Code. To permit this case to proceed would be utterly unconscionable.

The Court is prepared therefore to grant the motion to dismiss. But prior to doing so in light of the procedural gymnastic put into play at 17 minutes past midnight this morning, it is necessary to address the Debtor's belated motion to convert this case to a case under Chapter 11.

Now, as I indicated the Debtor observes correctly that under our Local Rules this is a matter that can be disposed of without the need for a hearing but I will address myself to a variety of issues germaine to the motion.

In doing so I do note that I have just recently had occasion to write on the subject of good faith requirement in a Chapter 11 case. The Philadelphia Rittenhouse Developer, 2011 Bankruptcy Lexus 1930 May 25, 2011. In that decision I point out that under the SGL Carbon Decision in the Third Circuit there is a good

faith filing requirement for Chapter 11 and in the moving papers for conversion Mr. Smith, you observe that the Supreme Court itself has recently addressed the question of whether there is an absolute right to convert the case, the Supreme Court decision being Marama (phonetic) v. Citizens Bank of Massachusetts cited in 2007. You point out correctly that that case, that decision was issued in the context of an attempt to convert a Chapter 7 case to a Chapter 13 case. You go on to urge the Court, this Court, to narrowly apply the Marama decision to only those situations where a Chapter 7 debtor is seeking to convert a case to a Chapter 13. I decline to do so.

I believe the principles that animate the Marama decision are equally applicable in the context of a proposed conversion from Chapter 7 to 11. I can see no reason why they would not be. Astonishingly you recited paragraph 12, the Debtor submits that irrespective of the articulated grounds for dismissal set forth in Section 1112b 4 there were no grounds whatsoever proven at the hearing on the instant dismissal motion or otherwise that no such grounds exist.

That is an absolutely absurd proposition.

In any event in Marama the Court denied the Chapter 7 Debtor's attempt to convert to Chapter 13 pointing out that if dismissal would occur under the Chapter to which the case was proposed to be converted it would be as if the Debtor could not be a debtor under that Chapter thereby implicating a prohibition on conversion.

Having had occasion just recently to evaluate the good faith standard as it arises in the context of Chapter 11 it is once again overwhelmingly clear that this case would be dismissed under Chapter 11. If I can just turn to that opinion. There is a substantial overlapping of the objective factors which inform the analysis of whether debtor is proceeding in good faith in Chapter 11 as contrasted with Chapter 7 just to list them.

Here I was reciting factors such as were articulated in the case of S.B. properties 185 Bankruptcy Reporter 198 Eastern District of Pennsylvania 1995. The Courts are instructed to look at whether the Debtor has few or no unsecured creditors, whether prepetition conduct of the Debtor has been improper, whether the

petition effectively allows the Debtor to evade Court orders, whether there are few debts to non-moving creditors, whether the petition was filed on the eve of foreclosure, whether there was pressure from non-moving creditors, whether the Debtor filed solely to create an automatic stay.

These are all in my view different ways of articulating the Glunk factors. This case would be dismissed without hesitancy under Chapter 11. Accordingly, based on the Marama decision the Debtor would be an ineligible debtor under Chapter 11, hence the motion to convert will be denied and an appropriate order dismissing the Chapter 7 case will be entered.

All right, thank you. Anything further?

MR. GALLAGHER: Nothing further your Honor. One question, the order dismissing would that be a effective upon entry or effective immediately?

THE COURT: It will be effective as soon as I sign the order.

MR. MILTZ: Thank you your Honor.

(Whereupon, the matter was concluded.)

C E R T I F I C A T I O N

I, Michele Hasso, a transcriptionist and Notary Public within the State of New York, do hereby certify that this transcript is a true and accurate transcript transcribed from the electronic tape recording, to the best of my ability and belief.

_____/s/_____

Michele N. Hasso

Dated: June 13, 2011